



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: **ACTION:** New York FHWA/HUD Livability
Initiative under Special Experimental Project
No. 14 (SEP-14)

Date: January 23, 2017

From: /S/ Peter J. Stephanos
Director, Office of Program Administration

In Reply Refer To:
HIPA-30

To: Peter W. Osborn
Division Administrator
Albany, NY

This memorandum is in reference to a December 16, 2016 email from Daniel C. Wood of your staff, which forwarded and endorsed the following:

1. A workplan, dated October 27, from the City of Binghamton, New York (City) under the FHWA/ HUD Livability Initiative under Special Experimental Project No. 14 (SEP-14); and
2. A letter from the New York State Department of Transportation (NYSDOT), dated December 9 forwarding the above SEP-14 workplan to your office for review and concurrence.

The City wishes to use multiple funding sources for this project including Federal funding from both the U.S. Department of Housing and Urban Development (HUD) and FHWA. The use of HUD Section 3 funding includes a requirement to use local hiring preferences in construction contracts. This requirement is in conflict with FHWA's requirements for construction contracting in 23 CFR 635.117, which prohibits the use of contract provisions that serve as geographic restrictions in the selection of the contractor's labor sources.

In the June 25, 2010 edition of the Federal Register, FHWA published the Notice: "Livability Initiative Under Special Experimental Project No. 14" (<http://www.gpo.gov/fdsys/pkg/FR-2010-06-25/pdf/2010-15438.pdf>). The Notice announced FHWA's decision to permit States to request SEP-14 approval for contracting practices intended to enhance livability and sustainability as part of any project that is to be jointly funded with HUD.

This pilot project is acceptable for inclusion in the above Livability Initiative subject to the following:

1. As per HUD requirements, all contracting documentation must include the Section 3 clause, verbatim, found at 24 CFR 135.38.

2. [Section 192 of Title I, Division L of the Consolidated Appropriations Act, 2016](#), "the FY 2016 Appropriations Act" provides a new requirement for projects using local labor hire provisions. All projects using local labor hiring requirements are subject to a certification requirement. As a condition of this SEP-14 approval, the City must submit a conforming project-specific certification (a verbatim certification of the Section 192 language).

In addition, we recommend that your office, NYSDOT, and the City of Binghamton coordinate with the local HUD office regarding Section 3, including the following:

- Applicability
- Recipient Responsibilities
- Section 3 Preference
- Economic Opportunities/Numerical Goals
- Recordkeeping and Reporting, and
- Contract Requirements for Contractors and Subcontractors

Subject to the above, we consider the City of Binghamton's workplan to be acceptable and in compliance with the workplan requirements of the June 25, 2010 Notice. Please ensure that the City provides you with both the bid analysis report and the final report as specified in its workplan. Thank you for the opportunity to review and comment on this SEP-14 request. Should you have any questions, please contact Gerald Yakowenko (202-366-1562) or John Hoyer (651-291-6111).